

Remarks

This application is a continuation of parent Application Serial No. 09/721,411 filed November 13, 2000. For this pending application, the Examiner issued a preliminary office action on July 14, 2004 containing a Restriction Requirement indicating that Claims 1-11 are drawn to a multi-component, longitudinally continuous extrusion, that Claims 12-14 are drawn to a multi-plate extrusion die, and that Claims 15-19 are drawn to a method of making a multi-component, longitudinally continuous extrusion. The Applicant filed a Response to the Restriction Requirement on August 13, 2004, provisionally electing Claims 1-11, which are the claims of Group I.

In the Office Action dated November 2, 2004, to which this is a response, Claims 1-6 have been rejected under 35 U.S.C. §102(b) as being anticipated by European Patent WO99/51425, Claims 9 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over the European Patent in light of Turk, et al. (US Pat. No. 5,738,935), and Claims 3-5, 10 and 11 have been rejected under 35 U.S.C. §112 because in Claim 3, line 3, the word "substantial" is alleged to be indefinite (and Claims 4 and 5 depend therefrom) and because in Claim 10, the phrases "highly weatherable" and "highly paintable" are allegedly indefinite (and Claim 11 depends therefrom). The Examiner also indicates that Claims 7, 8 and 11 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form so as to include all of the limitations of the base claim and any intervening claims. In this Response, Applicant has amended Claims 3 and 10 to address the §112 deficiencies and has amended Claims 7, 8 and 11 to be in allowable independent form as is more fully discussed, hereinbelow.

As to Claims 10 and 11 being rejected under 35 U.S.C. §112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention due to the use of phrases "highly weatherable" and "highly paintable," applicant has amended Claim 10 to removed the word "highly" from each of the phrases and respectfully requests that Examiner's rejection be withdrawn.

As to Claims 3-5 being rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention due to the use of "substantial," applicant has amended Claim 3 to remove the word "substantial" and respectfully requests that this rejection be withdrawn.

As to Claims 1 through 6 being rejected under 35 U.S.C. §102(b) as anticipated by WO 99/51425, examiner has asserted that WO '425 substantially teaches the claimed invention including a multi-component, longitudinally continuous extrusion comprising both a first and second composite member. Applicant respectfully asserts that WO'425 merely discloses use of the Celuka process which forms a "skin" of essentially non-foamed polymeric material around a foamed interior. This "s kin" of essentially non-foamed polymeric material is of identical composition to the interior foamed material as only one polymeric material blend is fed into only a single extruder. The extrusion formed in WO '425 is of lowest density at the center and of highest density at the "skin," but it is formed of a single material. Therefore, in no meaningful sense is there a "first composite member" and a "second composite member" as examiner has asserted is disclosed in WO'425. Further, Applicant has amended Claim 1 to further clarify that the "first composite member" is of a preselected formulation and that the "second composite member" is of a different, preselected formulation. New matter has not been added and support for the above amendments can be found on page 14, lines 5 through page 15, line 27, where different formulations are shown by way of example for a PVC/wood flour composite (e.g., the first high density composite member) and the PVC foamed core (e.g., the second, low density foamed member).

To further discuss WO '425, the dashed lines in Figs. 1 and 4, relied upon by examiner to show a "first composite member" and a "second composite member," are presumably drawn on the profiles to simplify discussion of the regions, but a careful inspection of both Figs.1 and 4 shows pockets formed by the foaming agent in the essentially unfoamed region referred to as "polymeric skin 10." At page 6, lines 1-10 of WO '425 one finds the only description of "polymeric skin 10:"

As shown in FIGS. 2-4, the foamed polymer-fiber composite 100 of this invention is ideally suited for decking, siding, railings, window frames, including styles and rails, and balusters. Even though the composite 100 is light-weight, it generally has a flexural modulus, tensile modulus, and/or Young's modulus of about 100,000 to 450,000 psi. As shown in FIG. 3, the composite 100 preferably allows screw and nail fasteners, such as screw 35, to be secured in a countersink relationship with the surface of the composite 100 or below the surface, without predrilling. This is generally accomplished by the use of plasticizing agents to lower the compression strength of the composite 100, and/or by the careful use

of blowing agents or gas in the molten precursor of the composite 100, so as to provide a cellular internal structure containing porosity 20 surrounded by a polymeric skin 10. This porosity, even without plasticizing agents, provides enough compressive strength relief to permit screw fasteners to countersink without predrilling.

It should be noted that there is reference to "the molten precursor" and that no place in WO '425 is there a reference to any other "molten precursor" or any indication of a separate polymeric material or of more than one extruder.

Thus, under the process disclosed in WO '425, there is a single extruder extruding a single formulation to form a product of variable density. Therefore, there are no side walls formed of a high density material of "a first, high density composite member...of a first pre-selected formulation extruded from a primary extruder" nor a "second, low density foamed member...having a second preselected formulation different from the first pre-selected formulation, coextruded with the first member in a molten state from a secondary extruder" as Applicant has claimed. Therefore, not only is the invention as recited in Claim 1 as amended not shown in the international published application, the invention is neither taught nor suggested by the same. Therefore, the rejection of claim 1 as amended and claims 2 through 6 which depend therefrom must be rescinded.

Claims 9 and 10 were rejected under 35 U.S.C. §103(a) as being unpatentable over WO '425 in view of Turk et al (US 5,738,935). In light of Applicants arguments for claims 1 through 6, Applicant respectfully requests that this rejection be rescinded.

Claims 7 and 8 were objected to as being dependent upon a rejected base claim and would be allowable if written in independent form including all the limitations of the base claim. Claims 7 and 8 were so amended in the claims listing above and are believed to be in condition for allowance.

Claim 11 was objected to as being dependent upon rejected base claims and would be allowable if written in independent form including all the limitations of all the base claims. In addition, Claim 10 is a base claim for Claim 11 and was objected to as being indefinite due to the usage of "highly weatherable" and "highly paintable." Claim 11 has been so amended to include all the limitations of the base claims with the exception that applicant removed the word "highly" from each of these phrases of base

Claim 10 and respectfully requests that Examiner's rejection be withdrawn and believes that this claim is in condition for allowance.

Applicant has enclosed Check No. 197354 in an amount of \$600.00 in payment of the three \$200.00 fees for three independent claims in excess of three under 37 C.F.R. 1.16(h). Applicant has also enclosed a Petition for Three Month Extension of Time including checks in payment of the \$1,020.000 fee, therefor. In view of the above, the reexamination and reconsideration of the application as amended is earnestly solicited.

Respectfully submitted,

George Melkonian

A handwritten signature in black ink, appearing to read "David C. Gadd", written over a horizontal line.

David C. Gadd

Registration No. 48,838

Enclosures:

Check Nos. 197354 in an amount of \$600.00

Petition for 3-month Extension of Time with payment

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